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No. 20,619

United States Court of Appeals
For the Ninth Circuit

HELEN FONG, also known as Helen
Fong, also known as Fong Hong May,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

Appeal from Judgment of the United States District Court
for the Northern District of California,
Southern Division

Honorable Fred M. Taylor, Judge for the District of Idaho,
Sitting by Special Assignment

APPELLANT'S OPENING BRIEF

STARK & CHAMPLIN,

By JOHN F. WELLS,

Financial Center Building,

Oakland, California 94612,

Attorneys for Appellant.

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APPELLANT'S OPENING BRIEF

JURISDICTIONAL STATEMENT

On May 5, 1964 plaintiff filed herein her Complaint
for Refund of Internal Revenue Taxes. Jurisdiction
of the District Court was based on Title 26 U.S.C. sec-
tion 7422, Title 28 U.S.C. sections 1346(a)(1), 1402
(a)(1), and the Internal Revenue Law of the United
States. (C. 1.)¹

¹The Clerk's Transcript will be designated "C." Page refer-
ences precede the colon and line references, where specified, fol-
low the colon.

On August 16, 1965 judgment was entered dismissing the complaint with prejudice as to all cause of action alleged. (C. 48.) Notice of Appeal was filed September 13, 1965. (C. 49.) Jurisdiction of the United States Court of Appeals for the Ninth Circuit is founded on 28 U.S.C. section 1291.

STATEMENT OF THE CASE

This is an action for refund of certain sums of interest paid by plaintiff on the income tax liabilities of her former husband, Fong Poy, and herself for the years 1939 through 1946.

Jeopardy assessments covering those liabilities were made by the Commissioner in 1951. Plaintiff and Fong Poy thereafter filed Petitions for Redetermination which were pending until 1961 when a settlement was reached on the basis of which the Tax Court entered decisions fixing the amounts of the liabilities. The 1951 assessments included interest which had accrued to the date of the assessments, but only the amounts of taxes and penalties were fixed by the Tax Court decisions (C. 43:3-4).² The 1951 assessments, and thus redetermined by the Tax Court, have since been paid in full.

In addition, the government has collected from plaintiff, not only interest on the tax liabilities from the dates they were due, but also interest on the

²The Tax Court has consistently declined jurisdiction to determine interest. This is discussed in detail later in this brief and it has significance in interpreting the code sections here involved.

interest which had accrued as of the date of the 1951 assessments. The Complaint in this action seeks a refund of such compound interest in amounts totaling \$10,473.01 together with statutory interest thereon from the dates of payment in 1959 and 1960. (C. 1-13.)

The case was submitted to the District Court upon an Agreed Statement of Facts. (C. 40-45.) There was no issue of fact in the case, and this appeal involves only a question of law.

SPECIFICATION OF ERROR

The District Court erred in concluding that interest on the interest included in the 1951 jeopardy assessments was legally charged and collected. (C. 47:9-14.)

ARGUMENT

THE ISSUE

Was the government entitled to collect interest on the interest included in the 1951 jeopardy assessments for the period of time prior to the Collector's notice of demand following the decision of the Tax Court?

The answer to that question poses as knotty a problem of statutory interpretation as one is likely to find, even in the tangled morass of the Internal Revenue Code. There are a handful of prior decisions on the question, but they are in conflict; the opinions are conflicting, and none of them fully considers all aspects of the problem.³ Before discussing the prior cases in

³See pages 11 to 17, *infra*.

detail, we will attempt to explain the problem in its statutory framework and to analyze the various sections of the Code which are involved.

To assist the Court, we have copied as an appendix to this brief the pertinent sections of the 1939 Revenue Code.

The collection of interest on interest was abolished entirely by Congress in the 1954 Code (Section 6601(f)(2)). This case arises under the 1939 Code, however, which did authorize the collection of interest on interest in certain circumstances. Plaintiff contends that those circumstances are not the circumstances of this case; that under the 1939 Code interest on interest was payable only after a deficiency assessment became final. Thus, if the taxpayer petitioned the Tax Court for a redetermination of the Commissioner's assessment there was no compounding of interest until after the finality of the Tax Court's decision.

Section 292(a) of the 1939 Code stated the general rule that interest at 6% upon the amount determined as a deficiency was assessed at the same time as the deficiency to be paid upon notice and demand from the Collector as part of the tax. Under that section interest was computed from the date prescribed for payment of the tax to the date the deficiency was assessed.

The collection of additional interest on the interest thus assessed was authorized in certain circumstances by section 294(b). It provided that if a deficiency, or any interest or additional amounts assessed therewith, was not paid in full within ten days from the date

notice and demand from the Collector, there should be collected interest upon such unpaid amount at a rate of 6% from the date of such notice and demand until it was paid.

In the ordinary case, the Commissioner was required to send a deficiency notice to the taxpayer before any deficiency could be assessed. The taxpayer had ninety days within which to petition the Tax Court for a redetermination. If such a petition was filed, there was no assessment and no notice and demand for payment of the tax until after the Tax Court's decision was final (section 272(a)). There was thus no compounding of interest during the pendency of the case in the Tax Court.

If the Commissioner had followed that procedure here, there would have been no ground whatever for collecting interest on interest during the ten years that Plaintiff's cases were pending in the Tax Court. There would have been no compounding of interest until the assessment and notice and demand from the Collector following the Tax Court decision in 1961.

The following chart illustrates the timetable involved.

<u>1961</u>			
Deficiency Notice	Tax Court Petitions Pending	Tax Court Decision	Notice of Demand for Payment
—No interest on interest during this period—			

In this case, however, the Commissioner chose to make the jeopardy assessment procedure provided by section 273 of the 1939 Code. As a result of the con-

fusing interrelationship between section 273 and section 294(b) (the general section which provides for interest on interest following an assessment), the government claims the right to collect interest on interest for the period during the pendency of the Tax Court proceedings—a right it clearly would not have except for the fact that this was a jeopardy assessment as distinguished from an ordinary assessment.

Section 273 provided that if the Commissioner believed that the collection of a deficiency would be jeopardized by delay, he might assess such deficiency immediately without a prior notice to the taxpayer and without a prior opportunity to litigate the matter before the Tax Court. The Commissioner was then entitled to enforce collection of the tax so assessed unless the taxpayer was able to post a stay bond in double the amount as to which the stay was desired. Whether or not such a bond was filed, the taxpayer had the same right to petition for a redetermination by the Tax Court as in the case of an ordinary proposed deficiency assessment.

Taxpayers Helen Fong and Fong Poy did petition the Tax Court for a redetermination, but did not post a bond to stay collection. (C. 41:24-27.) Since the taxpayers owned real property of a value in excess of the liabilities assessed, the Commissioner made no attempt to enforce collection during the time that the cases were pending in the Tax Court. For all practical purposes, the matter was thus handled as if it were not a jeopardy case (or if it were, that a bond to stay collection had been filed).

Notwithstanding this, the government has collected interest on interest for the period commencing with the 1951 assessments and all during the pendency of the cases in the Tax Court.

<u>1951</u>		<u>1961</u>	
Jeopardy	Tax Court	Tax Court	Notice of
Assessment.....	Petitions Pending	Decision	Demand for
			Payment
—Interest on interest collected for this period—			

The question here is whether the 1939 Code required such an anomalous result merely because the Commissioner arbitrarily chose to believe that collection would be “jeopardized by delay,” and made a summary assessment under section 273.

ANALYSIS OF THE CODE SECTIONS

The provision for jeopardy assessments has been in the Code since 1924. Its general purpose is plain: to secure to the government immediate control of the taxpayer’s property in cases where the lapse of time might result in failure of collection. The Commissioner is given wide discretion, which is not subject to review (*Adler v. Nicholas* (D.C. Colo. 1946) 70 F. Supp. 514; *Foundation Co. v. U.S.* (Ct. Cl. 1936) 15 F. Supp. 229; *Veeder v. Comm.* (7th Cir. 1929) 36 F. 2d 342), to determine which cases are proper subjects for jeopardy assessment.

The Code was amended in 1953 to give the Commissioner the further authority to abate a jeopardy

assessment previously made if he finds that jeopardy does not exist. (Section 273(k).) The Senate Report accompanying the bill which added that provision contains the following:

Under existing law if the Bureau of Internal Revenue believes that ultimate collection of a tax is in danger, it may make a so-called jeopardy assessment. *This is an arbitrary assessment designed to get control of available assets of the taxpayer pending final determination of the liability, if any.*

* * *

This bill simply permits the revocation of a jeopardy assessment whenever it appears that there is in fact no danger of losing any tax which may be due . . . (1953 U.S. Code Cong. and Adm. News, p. 2398.) (Emphasis added.)

Such being the Congressional understanding of the purpose of jeopardy assessments, and the Commissioner having been given such broad discretion, it seems unlikely that Congress ever intended to exact an additional sum of money from taxpayers in jeopardy cases, whether in the form of interest on interest, or otherwise.

When a taxpayer against whom a jeopardy assessment has been made files his petition for redetermination, the Tax Court determines the amount which should have been assessed, just as in the case of an ordinary deficiency (compare section 273(i) with section 272(b)). The Tax Court does not determine interest deficiencies in either case, as it has been repeatedly held that the Tax Court has no jurisdiction over the question of interest. (*Commissioner v. Kilpatrick's Estate* (6th Cir. 1944) 140 F.2d 887; *U. S. v.*

Globe Indemnity Co., (2nd Cir. 1938) 94 F.2d 576, 578; *Fuller v. Commissioner* (1953) 20 T.C. 308, 318.)

The amount determined by the Tax Court as the deficiency may be greater or less than the jeopardy assessment, and greater or less than the amount previously collected. Therefore, special provision was made in section 273(i) for collecting the difference or refunding the excess to the taxpayer. Section 297 made special provision for collecting interest after the ruling of the Tax Court in these jeopardy cases. (Compare the last sentence of 297 with the first sentence of 294(b), which applied to assessments generally.)

The pertinent portions of sections 273(i) and 297 are as follows:

§273(i). *Collection of unpaid amounts.*

When the petition has been filed with the Tax Court and when *the amount which should have been assessed has been determined by a decision of the Tax Court* which has become final, then any unpaid portion, [*of such amount*] the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated . . . (Emphasis and bracketed explanation added.)

§297. *Interest in case of jeopardy assessments.*

In the case of *the amount collected under Section 273(i)*, there shall be collected at the same time as such amount, and as a part of the tax, interest at the rate of 6% per annum *upon such amount* from the date of the jeopardy notice and demand to the date of notice and demand under section 273 (i), . . . (Emphasis added.)

It is very clear that the principal amount on which the interest is to be calculated pursuant to section 297 is the amount determined by the Tax Court as the amount of the deficiency, and collected pursuant to section 273(i). *As stated above, this amount does not include interest, as the Tax Court never determines interest in fixing the amount of the deficiency.* On this amount fixed by the Tax Court, the Collector (under section 297) collects interest at the rate of 6% per annum from the date of the jeopardy notice and demand to the date of notice and demand after the determination by the Tax Court has become final. The last sentence of section 297 provides for additional interest on those amounts only from the date of the notice and demand under section 273(i).

Section 297, therefore, does not authorize any compounding of interest prior to the notice and demand which follows the Tax Court's decision. Interest on interest in jeopardy cases thus commences at the same point in time as in ordinary cases, that is, after the Tax Court's determination becomes final and the Collector has issued his notice and demand for payment. This is consistent with the purpose of jeopardy assessments, which concerns the *collectibility*, not the *amount* of the tax liability.

There is no justification for penalizing a taxpayer in terms of his total ultimate tax liability as a result of his having been singled out for the arbitrary jeopardy assessment procedure. Particularly is this so when one considers that there is no provision for a review of the Commissioner's determination of, or

abatement of, jeopardy assessments. In this case the government did not enforce collection for years, an indication that collection of the tax was not in much jeopardy.

Absent a very clear and express statutory mandate, the Courts should not infer a Congressional intention that jeopardy assessments carry an additional dollar liability in the form of compound interest from a point earlier in time than would be true of an ordinary assessment.

THE CASES

The first reported case to have considered this question was apparently *Signal Gasoline Corporation v. United States* (DC SD Cal. 1942) 46 F. Supp. 276, in which the court held, erroneously in our view, in favor of the government. In that case, collection had been stayed during pendency of the case in the Tax Court by the filing of a bond. Section 294(b) was therefore expressly rendered inapplicable by the provisions of section 294(c). The court in the *Signal* case, correctly, looked to sections 273(i) and 297. It reasoned, again correctly, that 297 provided for interest on the amount collected under section 273(i), but based on the mistaken belief that the amount collected under 273(i) included interest concluded, incorrectly, that this authorized the collection of interest on interest.

As explained above, the amount collected under section 273(i) is the amount which should have been

assessed as determined by the Tax Court—*an amount which never includes interest.*

The opinion in the *Signal* case dismisses this with the observation, “The plaintiff’s contention that the Board [Tax Court] lacks jurisdiction to consider and did not enter a finding of interest is untenable. Assessment of interest was authorized by section 273(a).” (46 F. Supp. 276, 281.) That statement involves a non sequitur. The fact that interest is assessed *by the Commissioner* in a jeopardy case under section 273(a), just as interest is included in ordinary assessments, does not confer jurisdiction *on the Tax Court* over that aspect of the assessment. It has long been settled—regarded as axiomatic among Tax Court practitioners—that the Tax Court does not include any determination of interest in its decisions. It did not do so in the present case, in any of the cases cited herein, and so far we know, has never done so.

In *Symonides v. Crenshaw* (DC E Va., 1953) 53-2 U.S.T.C. 9639, the same result was reached, this time in a case where no bond had been filed to stay collection. Without any apparent awareness of the complexity of the problem, the opinion merely cited section 294(b) and let it go at that.

While at first blush section 294(b) seems relevant, it really has no application to the ultimate liability of a taxpayer in a jeopardy case which goes to a decision in the Tax Court. Section 294 is the general section providing for various additions to the tax in case of nonpayment following an assessment. If applied to a jeopardy case in which a Tax Court petition were

pending, it would result in collection of interest on the amounts assessed before the amounts had been redetermined. But that would be a temporary situation, subject to correction after the Tax Court decision pursuant to Section 273(i). That section provides for a credit or refund of any amount collected in excess of "the amount which should have been assessed." Accordingly, any interest collected pursuant to 294(b) during the pendency of the Tax Court case would be credited or refunded because it would necessarily be in excess of "the amount which should have been assessed" since the amount which should have been assessed would date back to the original jeopardy assessment. Ultimately, then, the authority for collecting interest is contained in section 297, which provides that in addition to the amount collected under section 273(i), i.e., the amount which should have been assessed, "there shall be collected interest from the date of the jeopardy notice and demand to the date of the notice and demand under section 273(i)."

In other words, section 294(b) permits the Collector to charge interest on assessments in any case, jeopardy or otherwise, in which the taxpayer permitted the assessment to become final. Absent a petition to the Tax Court, such would be controlling and interest on interest would be payable from ten days after the notice and demand for collection following the finality of the assessment. In ordinary cases, the Tax Court petition stays everything, the assessment as well as collection of interest. In a jeopardy case, the taxpayer is entitled to stay collection only by filing a bond. If

such is done, collection is stayed until after the decision of the Tax Court.⁴ If a bond is not filed, the Collector is entitled to go ahead and collect the assessment together with interest thereon, but the ultimate liability of the taxpayer is not determined until after the Tax Court decision. At that time any amounts (whether tax, penalty or interest) collected during the pendency of the Tax Court proceeding by virtue of the fact that no bond was filed to stay collection are to be credited or refunded to the extent that such amounts exceed the amount of that ultimate liability.

In *Crolich v. United States* (DC SD Ala., 1956) 144 F. Supp. 109, a taxpayer in precisely the same position as the plaintiff in this case was granted a refund of interest on interest. The Court analyzed section 273(i) and 297, and came to the conclusions expressed herein. The Court recognized the error of the *Signal* and *Symonides* cases and declined to follow them.

Not long thereafter the opposite result was reached in *Grimsley v. Patterson* (DC ND Ala., 1957) 57-2 U.S.T.C. 10,025 and *Brinck v. United States* (DC D Mont., 1959) 173 F. Supp. 286. Those cases relied heavily on the language of section 294(c) exempting the application of 294(b) where a bond has been filed, inferring therefrom that section 294(b) is applicable where a bond is not filed. That may be so, but as explained above, the taxpayer's *ultimate* liability is determined pursuant to sections 273(i) and 297 *after* the Tax Court decision.

⁴Collection of the assessed amounts is stayed by the terms of section 273(f); collection of the additional interest authorized by Section 294(b) is stayed by the terms of Section 294(c).

The rule of the *Grimsley* and *Brinck* cases would make the result turn on whether or not the victim of a jeopardy assessment was able to post a bond. Taxpayers unable to post a bond to stay collection would pay additional interest. Taxpayers able to post such a bond would escape payment of such additional interest.

That result would seem to violate due process. Arbitrarily to discriminate against one class of persons, without any reasonable basis for the classification, is a violation of the Due Process clause of the Fifth Amendment. (*Bolling v. Sharpe* (1954) 347 U.S. 497, 98 L. ed. 884; see *Charles C. Steward Machine Company v. Davis* (1937) 301 U.S. 548, 584, 585, 81 L. ed. 1279, 1290.) Statutes, the effect of which are to grant or deny a right or privilege depending upon a person's ability to pay, have been declared unconstitutional as violative of Due Process and Equal Protection. (*Griffin v. Illinois* (1956) 351 U.S. 12, 100 L. ed. 891; *Eskridge v. Washington State Board* (1958) 357 U.S. 214, 2 L. ed. 2d 1269.)

When faced with that argument, the Court of Appeals of the First Circuit in *Ginsburg v. United States* (1st Cir., 1960) 278 F.2d 470, reverted to the reasoning in the *Signal* case and said that interest on interest is payable whether or not collection is stayed by the filing of a bond. This avoids the due process problem nicely, or at least one aspect thereof,⁵ but it

⁵The question would still remain, whether due process is satisfied by an arbitrary jeopardy determination, not subject to review, which results in exaction of a penalty in the form of additional interest.

does terrible violence to the meaning of sections 297 and 273(i).

On petition for rehearing in *Ginsburg*, it was called to the Court's attention that the "amount which should have been assessed" referred to in section 273(i) does not include interest because the Tax Court does not have jurisdiction to determine interest. The Court then fell into manifest error. It said:

This may well be true with regard to deficiencies determined and assessed in the normal manner under section 272. See *Commissioner of Internal Revenue v. Kilpatrick's Estate*, 6 Cir., 1944, 140 F.2d 887. But section 273(c), dealing with jeopardy assessments, specifically provides that "the Tax Court shall have jurisdiction to redetermine the entire amount of the deficiency *and of all amounts assessed at the same time in connection therewith.*" (ital. supplied). This is to be compared with the more limited language of section 272(e), applicable to normal deficiency proceedings. Also compare section 273(i), "Collection of unpaid amounts," with section 272(b), "Collection of deficiency found by Tax Court," which further points up the distinction between jeopardy-assessment procedure and normal deficiency procedure. (278 F.2d 470, 473.)

The above statement is squarely contrary to the established rule that the Tax Court does not determine interest, not only in ordinary assessment cases (*Commissioner v. Kilpatrick's Estate, supra*), but also in jeopardy cases (*Fuller v. Commissioner, supra*, (1953) 20 T.C. 308, 318). That this is so is exemplified by the present case where the Tax Court decision omits any reference to interest. The same thing was true of each of the jeopardy cases which have discussed the prob-

lem of interest on interest and which are cited and discussed above.

The language of section 273(c), relied on in the opinion on rehearing in the *Ginsburg* case above, is no more broad than the language of section 272(e) applicable to ordinary deficiency assessments, which provides in a portion not quoted by the *Ginsburg* opinion, "the Board shall have jurisdiction . . . to determine whether any penalty, additional amount or addition to the tax should be assessed— . . ."

Regardless of the language of those sections, which may seem broad enough to authorize the Tax Court to determine interest deficiencies, the law is clearly to the contrary. Tax Court decisions do not include interest and never have. The conclusion is therefore inescapable that the combined effects of 273(i) and 297 do not authorize the collection of interest on interest, for they authorize only the collection of interest on the amounts determined by the Tax Court. Stated another way, the Tax Court's jurisdiction to determine interest, if it has such jurisdiction, is irrelevant because it did not exercise any such jurisdiction in this case.

Based as they are on an erroneous premise, the *Ginsburg* and *Signal* cases are wrong and ought not to be followed.

CONCLUSION

The question presented here has no importance for future cases, since the statutory ambiguity involved was resolved by the 1954 Code. The question does have

importance for the taxpayer in this case. It is a matter of doing her simple justice. There is no good reason why the taxpayer in this case should pay compound interest during the period that her case was pending in the Tax Court, a period of nearly ten years, merely because the Commissioner in 1951 determined that he would make a jeopardy assessment.

Inasmuch as compound interest on tax liabilities is disfavored generally, and in view of the fact that such interest in a jeopardy case would constitute a penalty based upon the exercise of administrative discretion which is not subject to review, plaintiff's position in this case ought to be sustained unless there is a clearly manifest Congressional intention to the contrary. Far from such being the case, a careful analysis of the Code sections indicates Congress never intended interest to be collected on assessed interest until after the assessment became final and ten days had elapsed following a notice and demand for collection. The earlier decisions to the contrary are confused and conflicting, have ignored settled principles, and ought not to be followed.

Dated, Oakland, California,
May 11, 1966.

Respectfully submitted,

STARK & CHAMPLIN,

By JOHN F. WELLS,

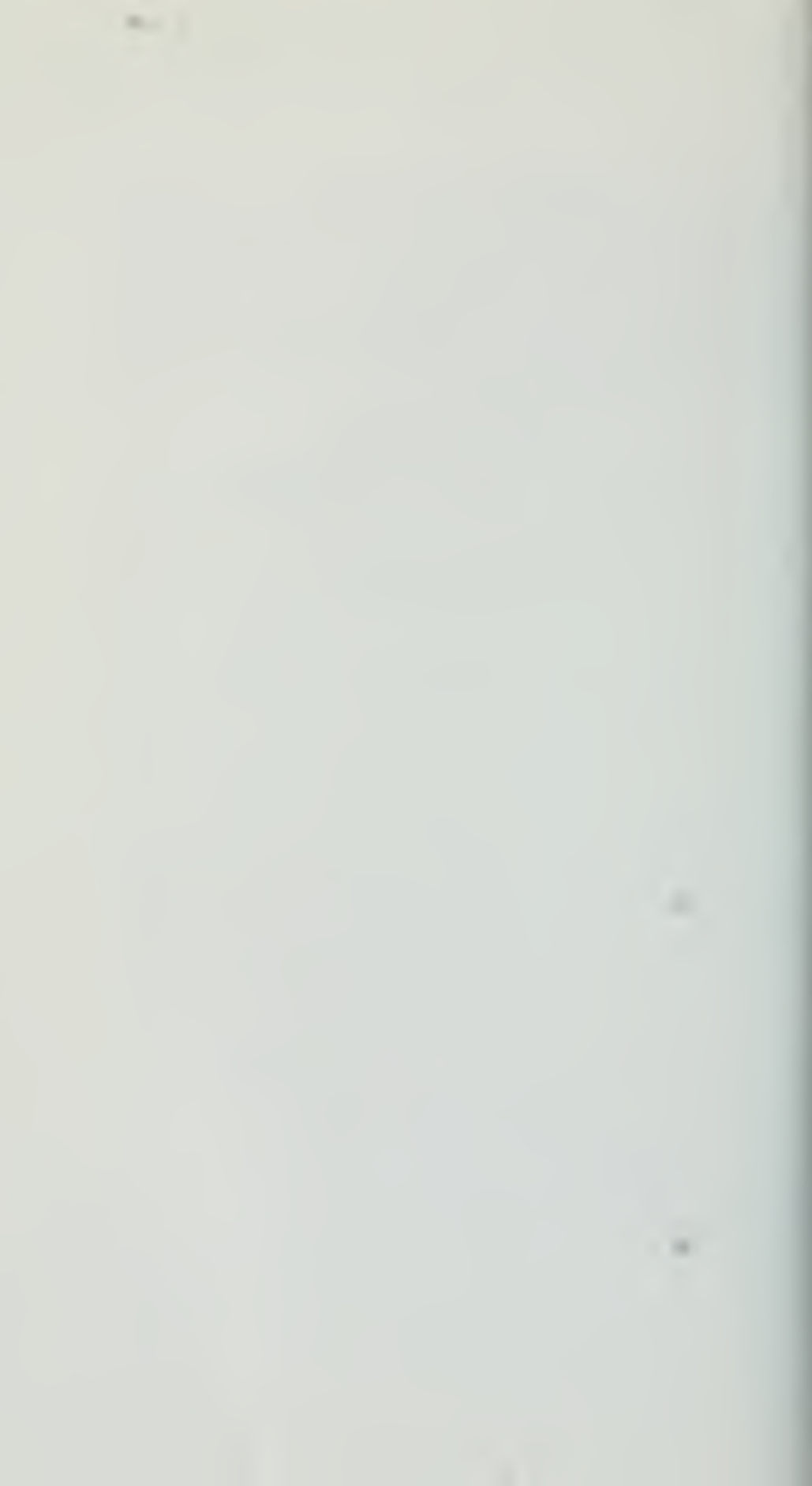
Attorneys for Appellant.

CERTIFICATE OF COUNSEL

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

JOHN F. WELLS,
Attorney for Appellant.

(Appendix Follows)



Appendix.



Appendix

PROVISIONS OF THE INTERNAL REVENUE CODE OF 1939.

(References to the Board of Tax Appeals refer, after 1942, to the Tax Court. See Section 504 of the Revenue Act of 1942, 56 Stat. 798.)

SEC. 272. Procedure in General.

[Sec. 272(a)]

(a) (1) Petition to Board of Tax Appeals.—If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within ninety days after such notice is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the ninetyth day), the taxpayer may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this chapter and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such ninety-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3653 (a) the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court. In the case of a joint return filed by husband and wife such notice of defi-

ciency may be a single joint notice, except that if the Commissioner has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, duplicate originals of the joint notice must be sent by registered mail to each spouse at his last known address. If the notice is addressed to a person outside the States of the Union and the District of Columbia, the period specified in this paragraph shall be one hundred and fifty days in lieu of ninety days.

(b) **Collection of Deficiency Found by Board.**—If the taxpayer files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the decision of the Board which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

SEC. 273. Jeopardy Assessments.

[Sec. 273 (a)]

(a) **Authority for Making.**—If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall immediately assess such deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) and notice and demand shall be made by the collector for the payment thereof.

Amendments: None.

[Sec. 273 (b)]

(b) Deficiency Letters.—If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 272 (a), then the Commissioner shall mail a notice under such subsection within sixty days after the making of the assessment.

[Sec. 273 (f)]

(f) Bond to Stay Collection.—When a jeopardy assessment has been made the taxpayer, within 10 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in section 297. If any portion of the jeopardy assessment is abated by the Commissioner before the decision of the Board is rendered, the bond shall, at the request of the taxpayer, be proportionately reduced.

[Sec. 273 (h)]

(h) Waiver of Stay—Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer

shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the taxpayer, be proportionately reduced. If the Board determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Board is rendered the bond shall, at the request of the taxpayer, be proportionately reduced.

[Sec. 273 (i)]

(i) Collection of Unpaid Amounts.—When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in section 322, without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

SEC. 292. Interest on Deficiencies.

[Sec. 292 (a)]

(a) General Rule.—Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed, or, in the case of a waiver under section 272 (d), to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier. If any portion of the deficiency assessed is not to be collected by reason of a prior satisfaction, in whole or in part, of the tax, proper adjustment shall be made with respect to the interest on such portion.

SEC. 294. Additions to the Tax in Case of Nonpayment.

[Sec. 294 (b)]

(b) Deficiency.—Where a deficiency, or any interest or additional amounts assessed in connection therewith under section 292, or under section 293, or any addition to the tax in case of delinquency provided for in section 291, is not paid in full within ten days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and

demand until it is paid. If any part of a deficiency prorated to any unpaid installment under section 272 (i) is not paid in full on or before the date prescribed for the payment of such installment, there shall be collected as part of the tax interest upon the unpaid amount at the rate of 6 per centum per annum from such date until it is paid.

[Sec. 294 (c)]

(c) Filing of Jeopardy Bond.—If a bond is filed, as provided in section 273, the provisions of subsection (b) of this section shall not apply to the amount covered by the bond.

SEC. 297. Interest in Case of Jeopardy Assessments.
[Sec. 297]

In the case of the amount collected under section 273 (i) there shall be collected at the same time as such amount, and as a part of the tax, interest at the rate of 6 per centum per annum upon such amount from the date of the jeopardy notice and demand to the date of notice and demand under section 273 (i), or, in the case of the amount collected in excess of the amount of the jeopardy assessment, interest as provided in section 292. If the amount included in the notice and demand from the collector under section 273 (i) is not paid in full within ten days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid.